



130-122

GP 1813

#8

PATENT
Attorney Docket No. 5552.0738-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FILED

SEP 10 1996

GROUP 1800

In re Application of:

Michael MACH et al.

Serial No.: 08/460,715

Filed: June 2, 1995

For: STRUCTURAL PHOSPHOPROTEIN
(PP28) OF HUMAN
CYTOMEGALOVIRUS (HCMV),
THE PREPARATION AND USE
THEREOF

RECEIVED

OCT 3 1997

OFFICE OF PETITIONS
AC PATENTS

Group Art Unit: 1813

Examiner: D. Lee

03CO

2/1

Assistant Commissioner for Patents
Washington, D.C. 20231

Attn: Office of the Assistant Commissioner for Patents

Sir:

PETITION TO ACCEPT MISPLACED FIGURE
AND RECEIVE A FILING DATE

Applicants respond to the outstanding Notice of Incomplete Application Filed Under 37 C.F.R. § 1.60, dated July 19, 1996. A petition fee of \$130.00 and a copy of the Notice are enclosed.

Applicants submit a copy of the informal drawing of the single figure, which was inadvertently either misplaced or omitted when the application was filed as a Rule 60 divisional application on June 2, 1995. Review of the undersigned's in-house file revealed that, in fact, the drawing was part of the file, but had been misplaced behind

LAW OFFICES
FINNEGAN, HENDERSON,
FARABOW, GARRETT
& DUNNER, L.L.P.
1300 I STREET, N. W.
WASHINGTON, DC 20005
202-408-4000

140 AA 09/03/96 08460715

1 122

130.00 CK

the claims, abstract and declaration. The undersigned subsequently contacted a representative of the Berger and Altman firm on August 1, 1996 to inspect the official PTO file to see whether this figure was filed with the application, but perhaps similarly misplaced. On August 26, 1996, Berger and Altman responded to the undersigned. It indicated that it was unable to obtain the file until that day, and, more importantly, it did not find evidence any drawing figure in the file. Consequently, the results of their inspection prompted the instant petition and explanation of the delay in supplying the enclosed item. Accordingly, please accept the enclosed drawing as part of the above-mentioned application.

Applicants note that this application was filed on June 2, 1995 and that the undersigned attorneys were notified of this alleged defect only on July 29, 1996, which is thirteen and a half months since the original papers were submitted to the PTO. Therefore, the PTO, not Applicants, was primarily responsible for the delay in submitting the omitted figure. Given these circumstances and given that the application is now complete under 37 C.F.R. § 1.60, Applicants respectfully request that the original June 2, 1995 filing date be assigned to the application.

If any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this petition, such extension is hereby respectfully requested. If there are any other fees due under 37 C.F.R. § 1.16 or §1.17 which are not enclosed herewith, including

any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Franklin C. Caffee Reg No. 18,
By *fn*

Carol P. Einaudi
Reg. No. 32,220

Colleen Superko
Colleen Superko
Reg. No. 39,850

Dated: August 28, 1996

LAW OFFICES

FINNEGAN, HENDERSON,
FARABOW, GARRETT
& DUNNER, L.L.P.
1300 I STREET, N.W.
WASHINGTON, DC 20005
202-408-4000